

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6304 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VIJAYKUMAR P KHAKKAR

Versus

STATE OF GUJARAT

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Appearance:

MR DM THAKKAR for Petitioner  
MR SR DIVETIA for Respondent No. 1  
MR RM CHHAYA for Respondent No. 2  
None present for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/97

C.A.V. JUDGEMENT

1. The petitioner challenges by this special civil application, the communication dated 2-9-1992 of the Mamlatdar, respondent No.3 herein, under which the petitioner was called upon to show cause as to why his stall should not be removed from the existing site i.e. Station Road, Virpur and why assessment and fine should

not be levied for unauthorised occupation.

2. The facts of the case are that the petitioner is having a tea stall at Station Road, Virpur since last more than four years. He has been given the electric connection by the Gujarat Electricity Board since more than two years. He produced a copy of receipt of Electricity Board dated 1-8-1990 and bill for the months of May and June, 1990. The petitioner stated that carrying on his tea stall at the Station Road is not in any manner obstructing the traffic or is not causing any nuisance to the public. It has further been stated that at the same place there are about three or four other stalls and the respondent No.3 has not touched to those persons. Under annexure 'C', the Deputy Executive Engineer asked the petitioner to remove his stall on or before 16th September, 1992 failing which it will be removed by the respondent No.2.

3. The counsel for the petitioner contended that the Mamlatdar was not the competent authority to take any action in the matter. The powers under sec.61 of the Bombay Land Revenue Code could have been exercised by the Collector. It has further been contended that no inquiry under sec.67 of the Code is held to decide the title of the land occupied by the petitioner. Lastly, the counsel for the petitioner contended that the respondents have no power to dispossess the petitioner from the land in dispute without following the due procedure under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

4. On the other hand, the counsel for the respondent contended that the petitioner has made an encroachment on the Station Road and he has unauthorisedly put a stall and is doing the business of selling tea. As the petitioner has made an encroachment on the public road, notice has been given to him by the Mamlatdar under section 61 of the Bombay Land Revenue Code and the final order has also been passed which the petitioner has concealed from this Court. The Deputy Executive Engineer was also within its competence to ask the petitioner to remove the encroachment and failing which, the encroachment has to be removed. The powers are to be exercised by the Mamlatdar in a case where the petitioner has no right, title or interest whatsoever over the land and as he has made an encroachment on the public road, the provisions of the Act, 1972 are not required to be put in service. Though the petitioner being an encroacher on the public road even no notice is required but still the respondents acted fairly and the Mamlatdar has given,

before taking any action of removing his encroachment on public road, a notice to the petitioner but instead of leaving the encroachment he has approached to this Court and for all these years he is continuing there under the interim order of this Court. In support of his contention the counsel for the respondent No.2 placed reliance on the decision of the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilisers Ltd. vs. Dy. Commr. of Commercial Taxes reported in AIR 1992 SC 152.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. Despite of repeatedly asking by the Court, the counsel for the petitioner is unable to show any evidence whatsoever in support of right, title or interest of the petitioner over the land in dispute. The counsel for the petitioner in fact has not disputed that the petitioner has made an encroachment on the public road. What he contended that he is there for last four years, and as such, he can only be evicted after following the procedure as laid down under the Act, 1972. In support of his possession on the land for last four years, the petitioner has not produced any evidence on record. If we go by the evidence which has been produced then the evidence is of the receipt of the Gujarat Electricity Board which is of the month of August, 1990. The notice has been given to the petitioner on 2-7-1991 that is within less than one year. The petitioner's possession at the most can be taken from the month of May, 1990 for which the electricity bill has been produced. An encroacher and particularly on the public road cannot be protected by this Court. The provisions of the Act, 1972 are not to be taken in the case where the petitioner has gone to the extent of making encroachment on the public road. It is in fact a nuisance and such a nuisance could have been removed by the respondents even without giving notice or opportunity of hearing to the petitioner. It is not the case where the petitioner is there for last many years. It is a new creation of the petitioner and immediately within reasonable time, notice of the same has been taken by the authorities concerned.

7. Much emphasis has been laid by the counsel for the petitioner on the ground that the Mamlatdar has no jurisdiction in the matter. It is not necessary to go on this question in this matter. It cannot be said that the respondents have acted arbitrarily in the present case. Though the respondents could have straightaway, without giving notice or opportunity of hearing to the

petitioner, removed this encroachment from the public road but still the respondent-Mamlatdar has given a notice to him and it is different matter that the petitioner has approached to this Court. Still the petitioner is unable to justify his claim of the possession on the land in dispute i.e. the public road. Even if it is taken that the Mamlatdar has no jurisdiction to give the notice, but still under Article 226 of the Constitution, this Court will not permit the petitioner to continue on the land in dispute i.e. the public road. If this plea is accepted and the proceedings initiated against the petitioner are quashed and set aside then what this Court will do, permit the person to encroach on public road. Sitting under Article 226 of the Constitution, this Court will not permit the encroachments to be there on the public road. This Court can only protect the citizens who have right, title on the land and not the persons who makes encroachments deliberately and knowingly on the public road.

8. Another contention raised by the counsel for the petitioner is that three or four other persons were not touched and as such a discrimination has been made. Though sufficient pleadings are not there on record of the special civil application in support of this contention but even if it is taken that three or four other stalls at the same place are continuing and the respondents have not taken any action then too on the basis of that encroachments which are ipso facto illegal the petitioner cannot make a ground of discrimination. In this respect reference may have to the two decisions of the Hon'ble Supreme Court in the case of Sneh Prabha vs. State of U.P. reported in 1996 (7) SCC 426 and in the case of Chandigarh Administration vs. Jagjit Singh reported in AIR 1995 SC 705 and the Division Bench decision of this Court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995 (2) GLH 228. The plea of discrimination cannot be based on some other illegal action or omission on the part of the respondents.

9. This writ petition is wholly misconceived and the same is dismissed with costs of Rs.2000/-. The petitioner is directed to remove the encroachment from the site - Station Road of Virpur within a period of one month from today. In case the petitioner does not remove the encroachment within stipulated period then it shall be open to the respondents to take appropriate action and remove the encroachment of the petitioner and the petitioner shall be liable to pay the costs incurred by the respondents in removing of the encroachment. Rule is

discharged and interim relief granted by this Court  
stands vacated.

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